

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JAMES RUSSELL,	:	
	:	
Petitioner,	:	Civ. No. 20-3478 (PGS)
	:	
v.	:	
	:	
STEPHEN JOHNSON, et al.,	:	MEMORANDUM & ORDER
	:	
Respondents.	:	
	:	

Petitioner, James Russell (“Petitioner” or “Russell”), is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner electronically submitted his habeas petition on March 31, 2020. In his habeas petition in this case, Petitioner is challenging his judgment of conviction for murder and conspiracy arising out of state criminal case number 09-01-101-1. Due to a clerical error, Petitioner’s habeas petition in this case was also docketed in another habeas case that Petitioner had pending, Civ. No. 20-1312, as an amended habeas petition. (*See* Civ. No. 20-1312 ECF 8). Accordingly, the amended habeas petition in Civ. No. 20-1312 then became the operative pleading. However, in that case, Petitioner’s initial habeas petition was challenging a different criminal conviction arising out of state criminal case number 06-05-0869-1. (*See* Civ. No. 1312 ECF 1). Thereafter, this Court ordered Respondents to file a response to Petitioner’s habeas petition in Civ. No. 20-1312. (*See* Civ. No. 20-1312 ECF 10). Because the “amended” habeas petition in Civ. No. 20-1312 was then the operative pleading in that case, it is not surprising that Respondents filed a response to the “amended” habeas petition challenging Petitioner’s state criminal conviction in 09-01-101-1. (*See* ECF 14-31). Petitioner did not file a reply in Civ. No. 20-1312. Therefore, the matter is now fully briefed in Civ. No. 20-1312, which, as stated above, challenges his state criminal conviction in criminal case number 09-01-101-1.

On April 7, 2021, this Court ordered Respondents to file a response in this case. (*See* ECF 5). However, any response would presumably be duplicative of Civ. No. 20-1312 as the operative habeas petition in that case (albeit due to a clerical error) is challenging 09-01-101-1. Given these facts, this Court shall vacate its order to answer in this case.

Nevertheless, this Court shall order the Clerk to refile Petitioner's initial habeas petition in Civ. No. 20-1312 in this case so that Petitioner can pursue his challenges to state criminal case number 06-05-0869-1 under this civil action number. Once that habeas petition is filed in this case, this Court shall screen the habeas petition challenging state criminal case number 06-05-0869-1.

Accordingly, IT IS this 15TH DAY OF April, 2021,

ORDERED that the Clerk shall vacate this Court's order to answer (ECF 5); and it is further

ORDERED the Clerk shall file and docket Petitioner's initial habeas petition in Civ. No. 20-1312 – ECF 1 – in this case; once that is filed in this case, this Court shall screen Petitioner's habeas petition challenging state criminal case number 06-05-0869-1; and it is further

ORDERED the Clerk shall file this memorandum and order also in Civ. No. 20-1312; and it is further

ORDERED the Clerk shall serve this memorandum and order on Petitioner by regular U.S. mail.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.